

**BEFORE THE
PHYSICIAN ASSISTANT BOARD
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

LEON G. PHAM, P.A.)

Case No. 1E-2011-218792

**Physician Assistant)
Certificate No. PA 11963)**

OAH No. 2012120484

**Respondent)
_____)**

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Physician Assistant Board, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 21, 2014.

IT IS SO ORDERED April 21, 2014.

PHYSICIAN ASSISTANT BOARD

By: 
ROBERT E. SACHS, P.A., PRESIDENT

BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LEON G. PHAM, P.A.,

Physician Assistant License No. 11963,

Respondent.

Case No. 1E-2011-218792

OAH No. 2012120484

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on February 12, 2014.

Judith T. Alvarado, Deputy Attorney General, represented Elberta Portman (Complainant), Executive Officer, Physician Assistant Committee (Committee), Medical Board of California, State of California.

Richard Wynn, Attorney at Law, represented Leon G. Pham, P.A. (Respondent).

Oral and documentary evidence were received at the hearing. The record was left open for Respondent to submit additional documentary evidence and for Complainant to file objections, if any, to the admissibility of the evidence. On February 26, 2014, Respondent submitted prescription records premarked for identification as Exhibits D, E and F. No objection was received by the March 7, 2014 deadline, and Exhibits D, E, and F are received in evidence. The matter was submitted for decision on March 7, 2014.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. On March 30, 1987, the Committee issued Physician Assistant License PA-11963 to Respondent. The license is in effect and will expire on December 31, 2014, unless renewed.

3. Respondent's license was previously disciplined, effective March 11, 2004, pursuant to a Stipulated Settlement and Disciplinary Order. Respondent agreed that complainant in a then pending accusation could establish the basis for discipline, waived his right to contest the charges, and agreed to be bound by the Disciplinary Order. It was alleged in the accusation that Respondent exceeded his authority as a physician assistant, engaged in gross negligence, committed repeated negligent acts, and displayed incompetence in connection with the care and treatment he provided to four patients. The license was revoked and the revocation was stayed for five years subject to specified terms and conditions, which included an actual suspension of 14 days, completion of a clinical training program, and practice monitoring. Respondent successfully completed probation and his license was fully restored.

4. a. On June 22, 2009, in the Superior Court, Torrance Courthouse, County of Los Angeles, in Case number 9SY02370, Respondent was convicted, on his plea of no contest, of violating Penal Code section 242 (battery), a misdemeanor. The court suspended imposition of sentence and placed Respondent on summary probation for three years on terms and conditions that included payment of \$2,079 in fines and fees, and completion of a domestic violence counseling program. Respondent complied with the terms and conditions of probation, and probation was terminated early, on August 5, 2010.

b. The facts and circumstances surrounding the conviction are that on September 13, 2008, Respondent struck his wife during the argument. While at a party at the home of friends, Respondent's wife did not feel well and went to the patio to get some fresh air. A male acquaintance joined her outside. Respondent's wife fell asleep, and Respondent appeared on the scene as the man was attempting to fondle his wife's breasts. The man ran off, but Respondent was angry at his wife over the situation. They left the party soon after the incident. As they were leaving, Respondent called her a "slut" several times and, while inside the vehicle still outside the home where the party had taken place, Respondent struck his wife in the face three times with his closed fist. Bruises were still visible on September 17, 2008, when a police officer interviewed Respondent's wife.

c. The conviction is for a crime substantially related to the qualifications, functions, and duties of a physician assistant pursuant to California Code of Regulations (CCR), title 16, section 1399.525, subdivision (f), in that it involves assault or battery.

5. Respondent subsequently apologized to his wife. Accompanied by her, Respondent sought counseling on September 17, 2008. The therapist reported the matter to the police and Respondent was subsequently arrested. At the hearing, Respondent's wife testified about the incident, about Respondent's past struggles with alcohol abuse, and about his recovery. In part because of the problems with alcohol and the protective order discussed below, Respondent and his wife have lived in separate homes since August 22, 2011. They now see each other regularly and their relationship is improving. They participate in marriage counseling. He has not hit her before or since September 13, 2008.

6. On August 22, 2011, Respondent and his 16-year-old son argued about Respondent's alcohol consumption. Respondent, who had been drinking alcoholic beverages, told his son that his tone of voice was disrespectful and pushed his son by the chest area near the neck. The son struck back, hitting Respondent in the face. Police responded to the call of Respondent's youngest daughter and arrested Respondent. An emergency protective order was issued that evening, requiring Respondent to stay away from his children.

7. Respondent's actions set forth in factual finding number 6 involve assault or battery and are, therefore, are substantially related to the qualifications, functions, and duties of a physician assistant pursuant to CCR, title 16, section 1399.525, subdivision (f).

8. On February 3, 2012, in the Superior Court, Torrance Courthouse, County of Los Angeles, in Case number 1AH04206, Respondent was convicted, on his conditional plea of no contest, of violating Penal Code sections 242 and 273a, subdivision (b) (cruelty to a child), misdemeanors. Pursuant to the plea agreement, sentencing was deferred until February 3, 2015, for Respondent to complete a 52-week parenting program and 26 Alcoholics Anonymous (AA) meetings. If he completes these two requirements, Respondent will only be sentenced with respect to the Penal Code section 242 conviction. The court also ordered the protective order issued against Respondent to remain in effect until February 3, 2015.

9. Respondent is complying with the terms and conditions of the deferred sentence plea. He completed the parenting classes, and has learned techniques to deal with challenging behavior from his children. He completed the court-ordered AA meetings.

10. a. In December 2007, Respondent left the medical clinic where he worked for an unspecified but significant period of time. He quit the business after discovering what he believed were dishonest practices by some of the people involved in the business. He was unable to find other work as a physician's assistant, and worked around the home. In retrospect, Respondent realized that his self esteem decreased and his depression increased the longer he was off work. He also started drinking more. The amount and frequency of Respondent's drinking further increased following the incident involving his wife.

b. Respondent has attempted to address his problem with alcohol, and has suffered several relapses. On December 13, 2010, Respondent presented to Aurora Las Encinas Hospital (Las Encinas) in Pasadena, California, with complaints of depression and alcohol abuse. He underwent detoxification received treatment for depression, including the medication Lexapro. He was discharged on December 19, 2010, with instructions for follow-up treatment. Respondent received additional outpatient treatment at Las Encinas from December 21, 2010 through February 25, 2011.

c. After a relapse in July 2013 following the death of his father, Respondent received inpatient treatment at Glendale Adventist Hospital.

d. Respondent receives treatment from Mohamed El-Gabalawy, M.D. (El-Gabalawy), a physician he first met at Las Encinas, typically once per month. Dr. El-Gabalawy has continued to prescribe Lexapro for depression, and, after the July 2013 relapse, prescribed Campral 333 mg to treat alcohol dependence.

11. Respondent has been clean and sober since July 2013. He now has a more solid foundation for continued recovery. Unlike before, he has a sponsor and a strong AA support group. He continues to regularly attend AA meetings, typically two each week. He now realizes that such participation is essential for his sobriety and that he cannot deny his problem or attempt to deal with it on his own. He also understands that alcohol abuse is not conducive to good judgment and is committed to his recovery. Respondent has benefitted from the medical interventions, and is on a new regimen to address his alcohol dependence.

12. Respondent has expressed remorse for his conduct and his substance abuse, and has apologized to his family members for his past behavior. He is in regular contact with his wife and his two daughters. Because of the restraining order, Respondent cannot initiate contact with son or be within 150 yards of him, but his son regularly writes to him.

13. In April 2011, Respondent started working at Holistic Medical Group as a physician assistant. He left his employment in August 2011 before returning in February 2012. He again left in May 2013, after becoming dissatisfied with a new administration and its treatment of patients; he also wanted to spend time with his ailing father. Since January 2014, Respondent has been working at his wife's medical services company, performing administrative duties. He hopes to return to work as a physician assistant in three to six months, and plans to bring new empathy and support for patients who appear to be dealing with substance abuse issues.

14. Respondent submitted three letters from individuals who have known him for significant periods of time who attest to his good character and professional skills, Jenny Argame, R.N. (Argame), Chanae Hodge (Hodge), and Minh N. Nguyen, M.D. (Nguyen). Argame was the practice administrator at the entity that owned Holistic Medical Group, and wrote on February 25, 2013, that Respondent received many positive comments regarding his treatment of patients. Hodge praised the manner in which Respondent provided care to her mother at the clinic that Respondent left in 2007, and hired Respondent for one year in the 2009 to 2010 period to serve as a case manager in a managed care firm. Respondent worked for Dr. Nguyen in 2007, and the physician described Respondent as experienced, friendly, skillful, helpful, resourceful, and always striving to improve performance.

15. On May 20, 2012, following a medical examination, Committee-selected Peter V. Barrett, M.D., concluded that there were no health-related problems that would interfere with Respondent's ability to practice medicine.

16. At the Committee's request, Respondent underwent a mental health examination on May 16, 2012, which was conducted by Committee-selected Stuart Shipko, M.D. (Shipko). The mental status examination was normal, and Dr. Shipko concluded that Respondent's conditions, alcohol dependence and major depressive disorder, were in remission. Psychotherapy was not indicated. Dr. Shipko opined that Respondent was not a danger to himself or others and that he could safely practice medicine.

17. The Committee has incurred the following costs in its investigation and prosecution of Respondent: \$7,887.50 in charges from the Attorney General's Office, \$8,973.50 in investigator costs, and \$2,881 in expert fees, or a total of \$19,732. These costs, absent objection or contrary evidence, are deemed to be reasonable.

LEGAL CONCLUSIONS

1. Cause exists pursuant to Business and Professions Code sections 2236, 3527, and 3531, and CCR, title 16, section 1399.521, subdivision (a), to discipline Respondent's license because he was convicted of a crime substantially related to the qualifications, functions, and duties of a physician assistant, by reason of factual finding number 4.

2. Cause exists pursuant to Business and Professions Code sections 2236 and 3527, and CCR, title 16, section 1399.521, subdivision (a), to discipline Respondent's license because he engaged in unprofessional conduct, by reason of factual finding numbers 5, 6, and 7.

3. Cause exist pursuant to Business and Professions Code section 125.3 to order Respondent to reimburse the Committee for its reasonable costs of investigation and enforcement, by reason of factual finding number 17 and legal conclusion numbers 1 and 2.

4. The purpose of licensing statutes and administrative proceedings enforcing licensing requirements is not penal but public protection. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476).

5. All evidence presented in mitigation and rehabilitation, as well as that presented in aggravation, has been considered in light of the criteria set forth in CCR, title 16, sections 1399.523 and 1399.527, and the legal requirement set forth in legal conclusion number 4. On the one hand, Respondent's conviction and the conduct that led to his current court supervision are serious and recent, and his license has been previously disciplined. On the other hand, Respondent complied with all conditions imposed by the court in 2009 and probation was terminated early. He is complying with the terms and conditions of the deferred sentencing. He has taken steps to understand and prevent recurrence of anger-triggered incidents. Significantly, he is addressing the root cause of his troubles with the law, his drinking of alcoholic beverages. Due to a combination of better understanding of the problem, continuing medical supervision

and treatment, and stronger group support, Respondent appears to have a better prognosis for recovery. Respondent now realizes that he must remain fully committed to recovery. Accordingly, the order that follows is necessary and sufficient for the protection of the public.

ORDER

Physician Assistant License No. PA-11963 issued to Leon G. Pham is hereby revoked. However, the revocation is stayed and Respondent's license is placed on probation for seven years upon the following terms and conditions.

1. Approval of Supervising Physician. Within 30 days of the effective date of this decision, Respondent shall submit to the Committee or its designee for its prior approval the name and license number of the supervising physician and a practice plan detailing the nature and frequency of supervision to be provided. Respondent shall not practice until the supervising physician and practice plan are approved by the committee or its designee.

Respondent shall have the supervising physician submit quarterly reports to the committee or its designee.

If the supervising physician resigns or is no longer available, Respondent shall, within 15 days, submit the name and license number of a new supervising physician for approval.

2. Notification of Employer and Supervising Physician. Respondent shall notify his current and any subsequent employer and supervising physician(s) of the discipline and provide a copy of the Decision and Order to each employer and supervising physician(s) during his period of probation, at onset of that employment. Respondent shall ensure that each employer informs the Committee or its designee, in writing within 30 days, verifying that the employer and supervising physician(s) have received a copy of the Decision and Order.

3. ObeY All Laws. Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine as a physician assistant in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

4. Quarterly Reports. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the committee or its designee, stating whether there has been compliance with all the conditions of probation.

5. Other Probation Requirements. Respondent shall comply with the Committee's probation unit. Respondent shall, at all times, keep the Committee and probation unit informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Committee and probation unit. Under no circumstances shall a post office box serve as an address of record, except as allowed by California Code of Regulations section 1399.523.

Respondent shall appear in person for an initial probation interview with Committee or its designee within 90 days of the decision. Respondent shall attend the initial interview at a time and place determined by the committee or its designee.

Respondent shall, at all times, maintain a current and renewed physician assistant license.

Respondent shall also immediately inform probation unit, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 days.

6. Interview with Medical Consultant. Respondent shall appear in person for interviews with the Committee's medical or expert physician assistant consultant upon request at various intervals and with reasonable notice.

7. Tolling for Out-of-State Practice or Residence. The period of probation shall not run during the time Respondent is residing or practicing outside the jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of California to reside or practice elsewhere, including federal facilities, Respondent is required to immediately notify the Committee in writing of the date of departure, and the date of return, if any.

Respondent's license shall be automatically canceled if Respondent's period of temporary or permanent residence or practice outside California totals two years. Respondent's license shall not be canceled as long as Respondent is residing and practicing as a physician assistant in another state of the United States and is on active probation with the physician assistant licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

8. Failure to Practice as a Physician Assistant – California Resident. In the event Respondent resides in California and for any reason Respondent stops practicing as a physician assistant in California, Respondent shall notify the Committee or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not practicing as a physician assistant.

All time spent in a clinical training program that has been approved by the Committee or its designee, shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Committee ordered suspension or in compliance with any other condition or probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically canceled if, for a total of two years, respondent resides in California and fails to practice as a physician assistant.

9. Unannounced Clinical Site Visit. The Committee or its designee may make unannounced clinical site visits at any time to ensure that Respondent is complying with all terms and conditions of probation.

10. Condition Fulfillment. A course, evaluation, or treatment completed after the acts that gave rise to the charges in the accusation but prior to the effective date of the decision may, in the sole discretion of the Committee or its designee, be accepted towards the fulfillment of the condition.

11. Completion of Probation. Respondent shall comply with all financial obligations (e.g., cost recovery, probation costs) no later than 60 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's license will be fully restored.

12. Violation of Probation. If Respondent violates probation in any respect, the committee after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Committee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. Cost Recovery. Respondent is hereby ordered to reimburse the Committee the amount of \$19,732 on a quarterly payment plan approved by the Committee. Failure to reimburse the Committee's costs of its investigation shall constitute a violation of the probation order, unless the Committee agrees in writing to payment by an installment plan because of financial hardship.

14. Probation Monitoring Costs. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Committee, which may be adjusted on an annual basis. The costs shall be made payable to the Physician Assistant Committee and delivered to the committee no later than January 31 of each calendar year.

15. Voluntary License Surrender. Following the effective date of this probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license to the Committee. The Committee reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 days deliver Respondent's wallet and wall certificate to the Committee or its designee and shall no longer practice as a physician assistant. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a physician assistant license, the application shall be treated as a petition for reinstatement of a revoked license.

16. Drugs - Abstain from Use. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a prescription.

This condition does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner. However, within 15 calendar days of receiving any lawful prescription medications, Respondent shall notify the Committee or its designee of the issuing practitioner's name, address, telephone number, medication name, strength, issuing pharmacy name, address, and telephone number.

17. Alcohol - Abstain from Use. Respondent shall abstain completely from the use of products or beverages containing alcohol.

18. Biological Fluid Testing. Respondent shall immediately submit to biological fluid testing upon the request of the Committee or its designee. Respondent shall pay the cost of biological fluid testing.

19. Diversion Program. Within 30 days of the effective date of this decision, Respondent shall enroll and participate in the Committee's Diversion Program until the program determines that further treatment and rehabilitation is no longer necessary. Respondent shall successfully complete the program. The program determines whether or not Respondent successfully completes the program. Respondent shall pay all costs of the program.

If the program determines that Respondent is a danger to the public, upon notification from the program, Respondent shall immediately cease practicing as a physician assistant until notified in writing by the Committee or its designee that Respondent may resume practice. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

20. Psychological Evaluation/Treatment. Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Committee or its designee, Respondent shall undergo a psychological evaluation by a Committee-appointed psychological evaluator who shall furnish a psychological report and recommendations to the Committee or its designee.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after notification by the committee or its designee.

Respondent may, based on the evaluator's report and recommendations, be required by the Committee or its designee to undergo psychological treatment. Upon notification, Respondent shall within 30 days submit for prior approval the name and qualifications of a

psychological practitioner of Respondent's choice. Upon approval of the treating psychological practitioner, Respondent shall undergo and continue psychological treatment until further notice from the Committee or its designee. Respondent shall have the treating psychological practitioner submit quarterly status reports to the Committee or its designee indicating whether the Respondent is capable of practicing medicine safely.

Respondent shall pay the cost of all psychological evaluations and treatment.

If the evaluator or treating practitioner determines that the Respondent is a danger to the public, upon notification, respondent shall immediately cease practicing as a physician assistant until notified in writing by the Committee or its designee that Respondent may resume practice.

DATED: 3/28/14

A handwritten signature in black ink, appearing to read 'Samuel D. Reyes', with a stylized flourish at the end.

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings